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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

PAUL PARSHALL, On Behalf of Himself and  
All Others Similarly Situated,

Plaintiff,

v.

UNITED AMERICAN BANK, NICHOLAS J.  
SCHRUP, III, JOHN C. SCHRUP, NORMAN  
I. BOOK, JR., JAY PAUL LEUPP, DENNIS C.  
DISALVO, MARGARET A. TAYLOR,  
WILLIAM W. HILL, STEPHEN A. WAY,  
GUY ROUNSAVILLE, JR., HOWARD J.  
WEILAND, ROSANNE FOUST, RONALD L.  
BLAND, HERITAGE COMMERCE CORP,  
and HERITAGE BANK OF COMMERCE,

Defendants.

Case No. \_\_\_\_\_

CLASS ACTION

**COMPLAINT FOR VIOLATION OF  
THE SECURITIES EXCHANGE ACT  
OF 1934**

JURY TRIAL DEMANDED

Plaintiff, by and through his attorneys, alleges upon personal knowledge as to himself, and upon information and belief based upon, among other things, the investigation of counsel as to all other allegations herein, as follows:

**SUMMARY OF THE ACTION**

1. This action stems from a proposed transaction announced on January 11, 2018 (the "Proposed Transaction"), pursuant to which United American Bank ("UAB" or the "Company") will be acquired by Heritage Commerce Corp ("Parent") and Heritage Bank of Commerce ("Merger Sub," and together with Parent, "Heritage").

2. On January 10, 2018, UAB's Board of Directors (the "Board" or "Individual

1 Defendants”) caused the Company to enter into an agreement and plan of merger (the “Merger  
2 Agreement”) with Heritage. Pursuant to the terms of the Merger Agreement, shareholders of  
3 UAB will receive 2.1644 Parent common shares for each share of UAB they own.

4 3. On February 26, 2018, defendants filed a Form S-4 Registration Statement (the  
5 “Registration Statement”) with the United States Securities and Exchange Commission (“SEC”)  
6 in connection with the Proposed Transaction.  
7

8 4. The Registration Statement omits material information with respect to the  
9 Proposed Transaction, which renders the Registration Statement false and misleading.  
10 Accordingly, plaintiff alleges herein that defendants violated Sections 14(a) and 20(a) of the  
11 Securities Exchange Act of 1934 (the “1934 Act”) in connection with the Registration Statement.  
12

### 13 **JURISDICTION AND VENUE**

14 5. This Court has jurisdiction over all claims asserted herein pursuant to Section 27  
15 of the 1934 Act because the claims asserted herein arise under Sections 14(a) and 20(a) of the  
16 1934 Act and Rule 14a-9.

17 6. This Court has jurisdiction over defendants because each defendant is either a  
18 corporation that conducts business in and maintains operations within this District, or is an  
19 individual with sufficient minimum contacts with this District so as to make the exercise of  
20 jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

21 7. Venue is proper under 28 U.S.C. § 1391 because a substantial portion of the  
22 transactions and wrongs complained of herein occurred in this District.

### 23 **PARTIES**

24 8. Plaintiff is, and has been continuously throughout all times relevant hereto, the  
25 owner of United American Bank common stock.

26 9. Defendant UAB is a California corporation and maintains its principal executive  
27 offices at 150 Almaden Boulevard, San Jose, California 95113. UAB common stock is traded  
28

OTC under the ticker symbol “UABK.”

10. Defendant Nicholas J. Schrup, III serves as Chairman of the Board of UAB.

11. Defendant John C. Schrup serves as President and Chief Executive Officer of UAB.

12. Defendant Norman I. Book, Jr. is a director of UAB.

13. Defendant Jay Paul Leupp is a director of UAB.

14. Defendant Dennis C. DiSalvo is a director of UAB.

15. Defendant Margaret A. Taylor is a director of UAB.

16. Defendant William W. Hill is a director of UAB.

17. Defendant Stephen A. Way is a director of UAB.

18. Defendant Guy Rounsaville, Jr. is a director of UAB.

19. Defendant Howard J. Weiland is a director of UAB.

20. Defendant Rosanne Foust is a director of UAB

21. Defendant Ronald L. Bland is a director of UAB.

22. The defendants identified in paragraphs 10 through 21 are collectively referred to herein as the “Individual Defendants.”

23. Defendant Parent is a California corporation and a party to the Merger Agreement.

24. Defendant Merger Sub is a California banking corporation, a wholly-owned subsidiary of Parent, and a party to the Merger Agreement.

### **CLASS ACTION ALLEGATIONS**

25. Plaintiff brings this action as a class action on behalf of himself and the other public stockholders of UAB (the “Class”). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

26. This action is properly maintainable as a class action.

27. The Class is so numerous that joinder of all members is impracticable. As of February 26, 2018, there were approximately 950,178 shares of UAB common stock outstanding,

1 held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

2 28. Questions of law and fact are common to the Class, including, among others,  
3 whether defendants violated the 1934 Act and whether defendants will irreparably harm plaintiff  
4 and the other members of the Class if defendants' conduct complained of herein continues.

5 29. Plaintiff is committed to prosecuting this action and has retained competent  
6 counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the  
7 other members of the Class and plaintiff has the same interests as the other members of the  
8 Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and  
9 adequately protect the interests of the Class.

10 30. The prosecution of separate actions by individual members of the Class would  
11 create the risk of inconsistent or varying adjudications that would establish incompatible  
12 standards of conduct for defendants, or adjudications that would, as a practical matter, be  
13 dispositive of the interests of individual members of the Class who are not parties to the  
14 adjudications or would substantially impair or impede those non-party Class members' ability to  
15 protect their interests.

16 31. Defendants have acted, or refused to act, on grounds generally applicable to the  
17 Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on  
18 behalf of the Class is appropriate.

19 **SUBSTANTIVE ALLEGATIONS**

20 32. UAB is a full-service commercial bank located in San Mateo County with full  
21 service branches located in San Mateo, Redwood City, and Half Moon Bay, California. At  
22 September 30, 2017, the Company had approximately \$336.4 million in assets, \$225.0 million in  
23 net loans, and \$303.9 million in deposits.

24 33. On January 10, 2018, the Individual Defendants caused the Company to enter into  
25 the Merger Agreement with Heritage.

26 34. Pursuant to the terms of the Merger Agreement, shareholders of UAB will receive  
27 2.1644 Parent common shares for each share of UAB they own.

1           35.     On February 26, 2018, defendants filed the Registration Statement with the SEC  
2 in connection with the Proposed Transaction.

3           36.     The Registration Statement omits material information with respect to the  
4 Proposed Transaction, which renders the Registration Statement false and misleading.

5           37.     First, the Registration Statement omits material information regarding UAB's  
6 financial projections, Heritage's financial projections, and the financial analyses performed by  
7 the Company's financial advisor, Sandler O'Neill + Partners, L.P. ("Sandler").

8           38.     With respect to Sandler's *United American Bank Net Present Value Analyses*, the  
9 Registration Statement fails to disclose: (i) the "internal forecasts for United American Bank for  
10 the years ending December 31, 2017 through December 31, 2021, as provided by the senior  
11 management of United American Bank"; (ii) the terminal value of a share of United American  
12 Bank common stock at December 31, 2021; (iii) Sandler's basis for applying price to 2021  
13 earnings per share multiples ranging from 10.0x to 18.0x and price to December 31, 2021  
14 tangible book value per share multiples ranging from 100% to 150%; and (iv) the inputs and  
15 assumptions underlying the discount rates ranging from 10.0% to 15.0%.

16           39.     With respect to Sandler's *Heritage Net Present Value Analyses*, the Registration  
17 Statement fails to disclose: (i) the "consensus mean analyst earnings per share estimates for  
18 Heritage for the years ending December 31, 2018 and December 31, 2019, as adjusted by the  
19 senior management of Heritage for certain tax rate changes"; (ii) the "estimated long-term annual  
20 earnings per share growth rate for the years thereafter and dividend payout ratio, as provided by  
21 the senior management of Heritage"; (iii) the terminal value of Heritage common stock at  
22 December 31, 2021; (iv) Sandler's basis for applying price to 2021 earnings per share multiples  
23 ranging from 14.0x to 18.0x and price to December 31, 2021 tangible book value per share  
24 multiples ranging from 160% to 260%; and (v) the inputs and assumptions underlying the  
25 discount rates ranging from 9.0% to 15.0%.

26           40.     With respect to Sandler's *Pro Forma Merger Analysis*, the Registration  
27 Statement fails to disclose: (i) the "internal financial projections for United American Bank for  
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the years ending December 31, 2018 through December 31, 2021, as provided by the senior management of United American Bank and adjusted by the senior management of Heritage”; (ii) the “consensus mean analyst earnings per share estimates for Heritage for the years ending December 31, 2018 and December 31, 2019, as adjusted by the senior management of Heritage for certain tax rate changes”; (iii) the “long-term annual earnings per share growth rate for the years thereafter and dividend payout ratio, as provided by the senior management of Heritage”; and (iv) the assumptions relating to purchase accounting adjustments, cost savings, transaction expenses, retirement of the preferred stock issued by UAB, and Heritage’s currently pending acquisition of Tri-Valley Bank as provided by the senior management of Heritage.

41. With respect to Sandler’s *United American Bank Comparable Company Analyses*, the Registration Statement fails to disclose the individual multiples and financial metrics for the companies observed by Sandler in the analysis.

42. With respect to Sandler’s *Analysis of Selected Merger Transactions*, the Registration Statement fails to disclose the individual multiples and financial metrics for the transactions observed by Sandler in the analysis.

43. With respect to Sandler’s *Heritage Comparable Company Analyses*, the Registration Statement fails to disclose the individual multiples and financial metrics for the companies observed by Sandler in the analysis.

44. The disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company, and allows stockholders to better understand the financial analyses performed by the company’s financial advisor in support of its fairness opinion. Moreover, when a banker’s endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.

45. Second, the Registration Statement omits material information regarding potential conflicts of interest of Sandler.

1           46.     Specifically, the Registration Statement fails to disclose all of the services Sandler  
2 has provided to Heritage and its affiliates in the past two years, as well as the amount of  
3 compensation received by Sandler for such services.

4           47.     Full disclosure of investment banker compensation and all potential conflicts is  
5 required due to the central role played by investment banks in the evaluation, exploration,  
6 selection, and implementation of strategic alternatives.

7           48.     Third, the Registration Statement fails to disclose whether any non-disclosure  
8 agreements executed by the Company and the prospective bidders contained standstill and/or  
9 “don’t ask, don’t waive” provisions that are or were preventing those counterparties from  
10 submitting superior offers to acquire the Company.

11           49.     Without this information, stockholders may have the mistaken belief that, if these  
12 potentially interested parties wished to come forward with a superior offer, they are or were  
13 permitted to do so, when in fact they are or were contractually prohibited from doing so.

14           50.     Fourth, the Registration Statement omits material information regarding potential  
15 conflicts of interest of the Company’s officers and directors.

16           51.     Specifically, the Registration Statement fails to disclose the timing and nature of  
17 all communications regarding future employment and directorship of the Company’s officers and  
18 directors, including who participated in all such communications.

19           52.     Communications regarding post-transaction employment during the negotiation of  
20 the underlying transaction must be disclosed to stockholders. This information is necessary for  
21 stockholders to understand potential conflicts of interest of management and the Board, as that  
22 information provides illumination concerning motivations that would prevent fiduciaries from  
23 acting solely in the best interests of the Company’s stockholders.  
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53. Fifth, the Registration Statement fails to disclose the terms and value of Company B's indication of interest submitted to the Company in September 2017.

54. The omission of the above-referenced material information renders the Registration Statement false and misleading, including, *inter alia*, the following sections of the Registration Statement: (i) Background of the Merger; (ii) Reasons for the Merger and Recommendation of the United American Bank Board of Directors; (iii) Opinion of United American Bank's Financial Advisor; and (iv) Interests of United American Bank Directors' and Executive Officers' in the Merger.

55. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to UAB's stockholders.

### **COUNT I**

#### **Claim for Violation of Section 14(a) of the 1934 Act and Rule 14a-9 Promulgated Thereunder Against the Individual Defendants and UAB**

56. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

57. The Individual Defendants disseminated the false and misleading Registration Statement, which contained statements that, in violation of Section 14(a) of the 1934 Act and Rule 14a-9, in light of the circumstances under which they were made, omitted to state material facts necessary to make the statements therein not materially false or misleading. UAB is liable as the issuer of these statements.

58. The Registration Statement was prepared, reviewed, and/or disseminated by the Individual Defendants. By virtue of their positions within the Company, the Individual Defendants were aware of this information and their duty to disclose this information in the Registration Statement.

59. The Individual Defendants were at least negligent in filing the Registration Statement with these materially false and misleading statements.

60. The omissions and false and misleading statements in the Registration Statement are material in that a reasonable stockholder will consider them important in deciding how to



1 vote on the Proposed Transaction. In addition, a reasonable investor will view a full and  
2 accurate disclosure as significantly altering the total mix of information made available in the  
3 Registration Statement and in other information reasonably available to stockholders.

4 61. The Registration Statement is an essential link in causing plaintiff and the  
5 Company's stockholders to approve the Proposed Transaction.

6 62. By reason of the foregoing, defendants violated Section 14(a) of the 1934 Act and  
7 Rule 14a-9 promulgated thereunder.

8 63. Because of the false and misleading statements in the Registration Statement,  
9 plaintiff and the Class are threatened with irreparable harm.

10 **COUNT II**

11 **Claim for Violation of Section 20(a) of the 1934 Act**  
12 **Against the Individual Defendants and Heritage**

13 64. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

14 65. The Individual Defendants and Heritage acted as controlling persons of UAB  
15 within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of their  
16 positions as officers and/or directors of UAB and participation in and/or awareness of the  
17 Company's operations and/or intimate knowledge of the false statements contained in the  
18 Registration Statement, they had the power to influence and control and did influence and  
19 control, directly or indirectly, the decision making of the Company, including the content and  
20 dissemination of the various statements that plaintiff contends are false and misleading.

21 66. Each of the Individual Defendants and Heritage was provided with or had  
22 unlimited access to copies of the Registration Statement alleged by plaintiff to be misleading  
23 prior to and/or shortly after these statements were issued and had the ability to prevent the  
24 issuance of the statements or cause them to be corrected.

25 67. In particular, each of the Individual Defendants had direct and supervisory  
26 involvement in the day-to-day operations of the Company, and, therefore, is presumed to have  
27 had the power to control and influence the particular transactions giving rise to the violations as  
28

1 alleged herein, and exercised the same. The Registration Statement contains the unanimous  
2 recommendation of the Individual Defendants to approve the Proposed Transaction. They were  
3 thus directly involved in the making of the Registration Statement.

4 68. Heritage also had direct supervisory control over the composition of the  
5 Registration Statement and the information disclosed therein, as well as the information that was  
6 omitted and/or misrepresented in the Registration Statement.

7 69. By virtue of the foregoing, the Individual Defendants and Heritage violated  
8 Section 20(a) of the 1934 Act.

9 70. As set forth above, the Individual Defendants and Heritage had the ability to  
10 exercise control over and did control a person or persons who have each violated Section 14(a)  
11 of the 1934 Act and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their  
12 positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the 1934  
13 Act. As a direct and proximate result of defendants' conduct, plaintiff and the Class are  
14 threatened with irreparable harm.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, plaintiff prays for judgment and relief as follows:

17 A. Enjoining defendants and all persons acting in concert with them from proceeding  
18 with, consummating, or closing the Proposed Transaction;

19 B. In the event defendants consummate the Proposed Transaction, rescinding it and  
20 setting it aside or awarding rescissory damages;

21 C. Directing the Individual Defendants to file a Registration Statement that does not  
22 contain any untrue statements of material fact and that states all material facts required in it or  
23 necessary to make the statements contained therein not misleading;

24 D. Declaring that defendants violated Sections 14(a) and/or 20(a) of the 1934 Act, as  
25 well as Rule 14a-9 promulgated thereunder;  
26  
27

1 E. Awarding plaintiff the costs of this action, including reasonable allowance for  
2 plaintiff's attorneys' and experts' fees; and

3 F. Granting such other and further relief as this Court may deem just and proper.

4 **JURY DEMAND**

5 Plaintiff hereby demands a trial by jury.

6 Dated: March 16, 2018

**RIGRODSKY & LONG, P.A.**

7 By: /s/ Michael Schumacher

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